MEASAT BROADCAST NETWORKS SYSTEM SDN BHD v. KETUA PENGARAH PERTUBUHAN KESELAMATAN SOSIAL

HIGH COURT MALAYA, KUALA LUMPUR
NOORIN BADARUDDIN J
[CIVIL APPEAL NO: WA-16-1-01-2020]
15 DECEMBER 2022

Abstract – *Social Security Organisation ('SOCSO') is empowered to decide a nominee's status of employment based on the relevant documents and upon examining the totality of the facts presented by a nominee. The determination of a contract of employment could not be made merely based on the title attached to it; the contract, whether for service or of service, must be determined after considering the nature of duties and functions performed by the employee under the contract.*

LABOUR LAW: *Employment – Employee – Claim under Employees' Social Security Act 1969 ('Act') consequent to accident – Whether employee entered into contract for service or of service – Whether fitted scope and definition of word 'employee' under s. 2(5) of Act – Whether Social Security Organisation ('SOCSO') has power to decide status of employment – Whether decided based on proper investigation – Whether SOCSO Appellate Board correctly decided that employee was engaged under contract of service*

The appellant and one Puan Khairunnisa Jalalludin ('Khairunnisa') entered into a contract for service, for the period of 1 April 2016 until 31 December 2016, wherein Khairunnisa was hired by the appellant as their direct sales agent to promote ASTRO TV packages to new subscribers. Khairunnisa received a fixed agent fee and earned a commission based upon sales performed by her, which was paid notwithstanding her attendance, and paid in consideration of the direct sales agent performing all the obligations. On 12 April 2016, Khairunnisa was involved in a motorcycle accident when she was on her way to work causing her to suffer injuries. She was given medical leave until 29 July 2016. On 26 August 2016, Khairunnisa tendered her resignation. Khairunnisa, subsequently, lodged a report to the Director of Social Security Organisation ('SOCSO') against the appellant who refused to report the accident and their failure to make statutory contributions for her under the Act. The Director of SOCSO Selangor decided that Khairunnisa was the appellant's employee under s. 2(5) of the Employees' Social Security Act 1969 ('Act') and ordered the appellant to produce an accident report together with other requested documents to the respondent. The appellant appealed to the Social Security Appellate Board ('Board') against the decision. The Board affirmed the decision of the Director of SOCSO Selangor and ordered the appellant to make statutory contributions for Khairunnisa under the Act. Hence, this appeal by the appellant.

Held (dismissing appeal):

(1) A contract, whether for service or of service cannot be determined solely by the label attached to the contract. The nature, duties and functions of Khairunnisa, as the appellant's direct sales agent, clearly showed that she was hired as an integral part of the appellant's business which depended very much on the subscription television service by the existing and new customers. She was paid a monthly salary even during her medical leave. She could not be employed with any other employers during her tenure with the appellant. As such, even though Khairunnisa's service was temporary, it did not mean that she was not an employee of the appellant. Her contract of service, *albeit* named as a contract for service was, in actual fact, a contract of service. Khairunnisa fitted the scope and definition of the word 'employee' under s. 2(5) of the Act. There was no appealable error in the decision made by the Board. (paras 20, 22, 24, 27 & 34)

(2) This appeal was derived from the investigation premised on the report lodged by Khairunnisa that the appellant refused to lodge her accident according to Rule No. 71 of the Peraturan-peraturan (Am) Keselamatan Sosial Pekerja 1971 ('Rules'). Based on the documents submitted by Khairunnisa, as required in Rule No. 102 of the Rules, the respondent could exercise its authority to decide whether she was entitled to claim. SOCSO has the power to decide a nominee's status of employment. Therefore, the decision of SOCSO could not be said to be improper and/or invalid on the ground that the decision was pre-determined as to the question of Khairunnisa's employment status without due or proper investigation. In fact, the appellant was given the opportunity to be heard by the Board and therefore, there was no breach of natural justice. (paras 29-32)

Case(s) referred to:

American International Assurance Co Ltd v. Dato' Lam Peng Chong & Ors [1999] 2 CLJ 771 CA ***(refd)***

Hoh Kiang Ngan v. Mahkamah Perusahaan Malaysia & Anor [1996] 4 CLJ 687 FC ***(refd)***

Lian Ann Lorry Transport & Forwarding Sdn Bhd v. Govindasamy Palanimuthu [1982] CLJ 173 FC ***(foll)***

Market Investigation Ltd v. Minister Of Social Security [1969] 2 QB 173 ***(refd)***

Legislation referred to:

Employees' Social Security Act 1969, ss. 2(5), 91(2)

For the appellant - David Tan Seng Keat; M/s T Thavalingam & Co

For the respondent - Saiyidah Sidek & Mohd Rosly Khady Ayub Khan; M/s Hisham Sobri & Kadir

Reported by S Barathi

JUDGMENT

Noorin Badaruddin J:

[1] This is the appellant's appeal against the decision of the Social Security Appellate Board ("the Board") dated 19 November 2019 affirming the decision of the Director General of the Social Security Organisation ("SOCSO/PERKESO") dated 3 November 2016 wherein the latter had determined that one Puan Khairunnisa binti Jalalludin ("Khairunnisa") was an employee of the appellant within the meaning of s. 2(5) of the Employees' Social Security Act 1969 ("the Act") and the appellant was accordingly required to pay contributions on her behalf.

Background Facts

[2] Khairunnisa was hired by the appellant on 1 April 2016 as their direct sales agent to promote ASTRO TV packages to new subscribers (and upgrade packages to the existing subscribers) by conducting and/or participating in door-to-door activities, appointments, booth sales and promotional events.

[3] The appellant and Khairunnisa had entered into a contract ("the contract") for service for the period of 1 April 2016 until 31 December 2016.

[4] Under the contract, Khairunnisa received a fixed agent fee of RM1,650 and earned a commission based upon sales performed by her. The fixed agent fee was paid notwithstanding her attendance and was paid in consideration of the direct sales agent performing all of the obligations.

[5] On 12 April 2016, Khairunnisa was involved in a motorcycle accident when she was on her way to work. The accident happened around 9.30am in Bukit Beruntung, Selangor. She suffered a fracture on her left shoulder and from permanent brain cell damage which caused a reduction in her hearing, taste and smell sensory abilities. She was given medical leave from 12 April 2016 until 29 July 2016.

[6] On 26 August 2016, Khairunnisa tendered her resignation letter to the appellant which was accepted by the appellant on 8 September 2016.

[7] On 20 September 2016, the Director of SOCSO Selangor received a report lodged by Khairunnisa against the appellant who refused to report the accident and their failure to make statutory contributions for her under the Act. In her report, Khairunnisa stated the followings:

> Saya ingin membuat aduan ini kerana selepas mengalami kemalangan semasa perjalanan ke tempat kerja, saya kini telahpun kekurangan keupayaan deria mendengar, menghidu dan rasa. Punca ini akibat saraf otak rosak kekal dan tidak boleh sembuh seperti asal, gara-gara kemalangan tersebut. Tujuan aduan saya ialah agar nasib saya terbela dan juga mampu mewakilkan aduan ini kepada bekas rakan-rakan sejawat dengan saya sebelum ini.

[8] On 20 September 2016, the respondent took down Khairunnisa's statement and she had furnished supporting documents such as salary slips, medical leave certificate and employees pass.

[9] On 3 November 2016, the Director of SOCSO Selangor decided that Khairunnisa was the appellant's employee under s. 2(5) of the Act and ordered the appellant to produce an accident report together with other requested documents to the respondent. The appellant was informed that they had until 17 November 2016 to file an appeal to the Board.

[10] On 28 August 2017, the appellant filed an appeal to the Board against the decision of the "Ketua Pengarah PERKESO Negeri Selangor" dated 3 November 2016. The appellant maintained that Khairunnisa was not their employee under s. 2(5) of the Act.

[11] Mohamad Faizul Hadzri bin Zakaria, the investigation officer of the respondent ("IO") took down Khairunnisa's statement about her employment with the appellant and on 26 July 2018, the IO completed his investigation and gave his opinion that Khairunnisa was not an employee of the appellant.

[12] Upon receiving the investigation report and the opinion of the IO, the Director of SOCSO, Selangor maintained his decision that Khairunnisa was the appellant's employee.

[13] On 19 November 2019, the Board affirmed the decision of the Director of SOCSO Selangor and ordered the appellant to make a statutory contribution for Khairunnisa under the Act. Hence, the present appeal.

The Appellant's Grounds Of Appeal

[14] Two key issues can be deduced from the appellant's memorandum of appeal. The appellant contends that:

(i) the decision of SOCSO dated 3 November 2016 was improper and/or invalid having predetermined the question of Khairunnisa's employment status without due or proper investigation and without any reference to key documentation, such as the contract and the appellant's statement which were only received by SOCSO in July 2018; and

(ii) that the Board had applied the incorrect legal tests in determining whether or not Khairunnisa was an employee within the meaning of the Act and in connection therewith, had failed to take into consideration the weight of evidence establishing the absence of key factors of control by the appellant over Khairunnisa.

Findings

[15] Section 91(2) of the Act states:

Appeal

91(1) Save as expressly provided in this section, no appeal shall lie from an order of the appellate boards set up by or under this Act.

(2) An appeal shall lie to the High Court from an order of an appellate board set up by or under this Act if it involves a substantial question of law.

(3) The period of limitation for an appeal under this section shall be sixty days from the date the order is made.

[16] The question of law arising and repeated in the instant matter has been identified by the Board. The Board in its grounds of judgment had stated:

Isu

[10] Isu yang timbul dalam permohonan ini adalah sama ada Khairunnisa binti Jalalludin ("Pengadu") adalah seorang "pekerja" di Measat Broadcasting Networks Systems Sdn. Bhd. bagi maksud Seksyen 2(5) AKSP 1969 atau sebaliknya dianggap sebagai seorang kontraktor bebas. Dalam ertikata lain, samada beliau bekerja di bawah suatu kontrak perkhidmatan ("Contract of Service") atau di bawah suatu kontrak untuk perkhidmatan ("Contract for Service").

[17] The Board had rightly quoted and was guided by the authorities in determining whether Khairunnisa is an employee/workman of the appellant or otherwise.

[18] The Board had quoted the case of *American International Assurance v. Dato' Lam Peng Chong & Others* [1999] 2 CLJ 771 where the court in reference to the case of *Hoh Kiang Ngan v. Industrial Court* [1996] 4 CLJ 687; [1995] 3 MLJ 369 had laid down the test to determine the question whether a person is a 'workman' as defined under the Industrial Relations Act 1967 as follows:

First, the issue whether a person is a workman as defined by the Act depends upon the nature of the engagement in a given case, A person is a workman if he is engaged under a contract of service. But he is an independent contractor and therefore not a workman if his engagement is pursuant to a contract for services. The point has been concluded by binding authority.

In *Hoh Kiang Ngan v. Mahkamah Perusahaan Malaysia & Anor.* [1996] 4 CLJ 687, the Federal Court laid down the applicable test in the following terms:

> In our judgment, the correct test to be applied in determining whether a claimant is a workman under the Act is that enunciated by Chang Min Tat FJ in *Dr A. Dutt v. Assunta Hospital* [1981] 1 MLJ 304 at p. 311. We accordingly hold that a workman under the Act is one who is engaged under a contract of service. An independent contractor who is engaged under a contract for services is not a

A workman under the Act. We take this view because it provides, as earlier observed, for a flexible approach to the determination of the question.

It is fairly plain to see why flexibility is achieved by having resort to this test.

B In all cases where it becomes necessary to determine whether a contract is one of service or for services, the degree of control which an employer exercises over a claimant is an important factor, although it may not be the sole criterion. The terms of the contract between the parties must, therefore, first be ascertained. Where this is in writing, the task is to interpret its terms in order to determine the nature of the latter's duties C and functions. Where it is not then its terms must be established and construed. But in the vast majority of cases there are facts which go to show the nature, degree and extent of control. These include, but are not confined, to the conduct of the parties at all relevant times. Their determination is a question of fact.

D When all the features of the engagement have been identified, it becomes necessary to determine whether the contract falls into one category or the other, that is to say, whether it is a contract of service or a contract for services.

...

E Second, it is clear from the decisions in *Dr. A. Dutt v. Assunta Hospital* [1981] 1 MLJ 304 and *Hoh Kiang Ngan v. Mahkamah Perusahaan Malaysia & Anor.* [1996] 4 CLJ 687 that **the question whether a person is a workman is one of mixed law and fact for the Industrial Court to decide.** "The fact is the ascertainment of the relevant conduct of the parties under their contract and the inference proper to be drawn therefrom as to the F terms of the contract and the question of law, once the terms have been ascertained, is the classification of the contract for services or for (*sic*) service": (per Chang Min Tat FJ in *Dr A Dutt v. Assunta Hospital* (*ibid*) at p. 310). (emphasis added)

G **[19]** The Board had identified the tests applicable in determining the contract whether a person is a workman or otherwise. The Board stated:

[19] Untuk menentukan jenis kontrak, ujian-ujian yang telah diterima pakai di dalam kes-kes yang telah diputuskan oleh Mahkamah adalah seperti berikut:

H (i) Ujian Kawalan

(ii) Ujian Organisasi dan Integrasi

(iii) Ujian Usahawan

(iv) Ujian Pelbagai/Komposit

I

[20] This court finds that the Board had correctly applied the law to the facts of the matter herein. It must be borne in mind that a contract, whether it is for service or of service, cannot be determined solely by the label attached to the contract. The mere fact that the contract is titled as such is not conclusive that it is indeed a contract for service. The Federal Court in *Hoh Kiang Ngan* (*supra*) had stated:

> This shows the true principle: that it is the functions of and the duties actually discharged by the particular claimant that is important and not merely the label that is attached to the particular employment or indeed the purpose of the engagement.

[21] The Board had examined not only the contract between the appellant and Khairunnisa but also the testimony of the witnesses called before it to determine whether the service of Khairunnisa is a contract for service or of service. The Board had identified the nature of duties and functions of Khairunnisa under the contract as follows:

> [20] Di dalam kes ini, Pengadu telah menandatangani kontrak untuk jawatan sebagai Direct Sales Agent. Beliau telah dibayar RM1,650.00 sebulan sebagai "Direct Sales Agent Fees (per month)" di samping komisyen dan bonus skim seperti di Appendix 1 of Schedule A. Pengadu juga dibayar "Handphone and Travelling Allowance" sebanyak RM300.00 sebulan.
>
> [21] Tugas-tugas beliau telah diperincikan di bawah Schedule B.
>
> [22] Menurut keterangan Pengadu, waktu kerja adalah dari 10.00 pagi sehingga 10.00 malam untuk 6 hari dan 1 hari cuti yang ditetapkan oleh Majikan.
>
> [23] Skop kerja beliau adalah mempromosikan pakej-pakej yang ditawarkan oleh Astro dan menarik pelanggan supaya melanggani pakej tersebut. Lokasi tempat bekerja Pengadu adalah tidak sama dan berubah-ubah mengikut arahan Majikan. Ini selaras dengan peruntukan di bawah Klausa 2.3 di mana dinyatakan:
>
> > 2.3. The Direct Sales Agent shall render the services at the premises and locations set out in Schedule A or at any other location(s) as the Company may designate pursuant to this Agreement hereafter the "Location".
> >
> > 2.4. The Direct Sales Agent shall provide the services in accordance with the Company's business sales activities (which includes business activities conducted on public holidays and irregular hours) and the Direct Sales Agent agrees that the Company shall be entitled to vary its business activities and the Direct Sales Agent undertakes to comply with the same.
>
> [24] Pengadu juga menyatakan bahawa ketua beliau adalah Encik Devarajan yang selalu memberi arahan tugasan serta beliau perlu menghantar gambar beliau sebagai rekod kedatangan serta bukti kehadiran di lokasi bertugas kepada Devarajan. Arahan ini dinyatakan di klausa 2.5. seperti berikut:

A

> The Direct Sales Agent shall communicate/liase directly with the authorised Company representative or to such other personnel of the Company as notified by the Company from time to time.

[25] Di bawah Schedule A, "Authorised Company Representative" adalah Devarajan a/l Veerasamy.

B

[26] Di samping itu, Pengadu juga dibekalkan dengan uniform baju kerja, tag nama, kad perniagaan, flyer dan borang pendaftaran pakej Astro. Pengadu juga tidak dibenarkan bekerja dengan majikan lain atau melakukan aktiviti pekerjaan lain. Di Klausa 2.6 Kontrak menyatakan seperti berikut:

C

> 2.6. The Direct Sales Agent agrees to provide the services solely and exclusively to the Company and agrees that the Direct Sales Agent shall not be employed or engaged to render services similar to the Services by any other third party, during the Term without the Company's prior written consent.

D

[27] Berdasarkan pada fakta-fakta di atas adalah jelas bahawa pihak Syarikat/Majikan membuat kawalan terhadap Pengadu di dalam pekerjaan seharian beliau. Malah di dalam kontrak perkhidmatan terdapat banyak klausa-klausa yang menunjukkan terdapat kawalan terhadap Pengadu.

E

[28] Di dalam kes *Lee Moi v. Nam Sing Diving Kepong* [1972] 1 MLJ 113, the Court had held:

> The essential matter to be considered is the amount of control exercised over the person rendering the service by the person to whom they were rendered. The greater the amount of such direct control, the more clear it is that the contract is one of service; the lesser the control, the more clear that it is a contract for service.

F

[22] Looking into the contract relating to the element of control and the facts of the matter herein, this court finds that there is no error in the Board's finding. The facts found by the Board fortify that Khairunnisa was an employee of the appellant.

G

[23] The next test considered by the Board is whether the service of Khairunnisa forms an integral part of the appellant's business. The Board considered as follows:

H

[30] Di dalam kes *Stevenson Jordan & Harrison Ltd v. Mac Donald & Evans* [1952] 69 RPC 10, Lord Denning berkata:

> Under a contract of service, a man is employed as part of the business and his work is done as an integral part of the business whereas under a contract for service, his work although done for the business is not integrated into it but only accessory to it.

I

[31] Jemaah berpandangan bahawa pekerjaan Pengadu sebagai Direct Sales Agent adalah 'part and parcel' dan juga "integral part" dalam perniagaan Pemohon. Pemohon terlibat dalam perniagaan dan langganan perkhidmatan siaran yang dikenali sebagai Astro. Di dalam kontrak perkhidmatan, perniagaan Pemohon adalah seperti berikut:

> The Company is in the business of sales and distribution for a subscription television service known as "ASTRO".

[32] Oleh itu, pekerjaan Pengadu untuk mempromosikan pakej-pakej yang ditawarkan Astro serta menarik orang ramai untuk menjadi pelanggan pakej adalah "part and parcel" perniagaan Pemohon. Malah menurut saksi pihak Pemohon, terdapat jawatan tetap dan di bawah "contract of service" sebagai Direct Sales Agent di dalam pertubuhan Pemohon yang melakukan tugas-tugas yang sama. Pada kebiasaannya Direct Sales Agent Kontrak ini akan diserapkan sebagai pekerja tetap sekiranya mereka menunjukkan prestasi kerja yang baik. ini jelas menunjukkan bahawa Pengadu di dalam kes ini adalah seorang pekerja di bawah AKSP 1969.

[24] This court agrees with the findings made by the Board. It cannot be disputed that the nature and duties and functions of Khairunnisa as the appellant's Direct Sales Agent clearly show that she was hired as an integral part of the appellant's business which depends very much on the subscription television service by the existing and new customers. She was paid with a monthly salary even during her medical leave. She cannot be employed with any other employers during her tenure with the appellant. As such even though Khairunnisa's service is temporary (where she can be absorbed as a permanent staff) does not mean that she is not an employee of the appellant. Her contract of service *albeit* named as contract for service is in actual fact a contract of service. There exists not only a relationship of master and servant between the appellant and Khairunnisa in terms of the degree of control the appellant had on her but importantly she was hired as an integral part of the appellant's business.

[25] In *Lian Ann Lorry Transport & Forwarding Sdn Bhd v. Govindasamy Palanimuthu* [1982] CLJ 173; [1982] 1 MLRA 668, the respondent therein was employed on a daily rated wage of RM15 a day and had only served the appellants three days. As a result of the accident which occurred on the fourth day of his employment, he became incapacitated and had to cease employment. According to the appellants' managing director the respondent was put on daily rated wage because he was a new employee, and had he been treated as a permanent employee he would have been employed on a fixed monthly wage of RM90 per month plus commissions based on the tonnage of goods transported by him. The learned trial judge held that because the respondent was employed as a daily paid worker and not as a permanent employee of the appellants he was therefore not employed under a contract of service as envisaged by the Act. However, the Federal Court had this to say:

In our view, the duration and nature of an employment, be it temporary or permanent, is immaterial for the purpose of determining the existence of a contract of service. *As long as there exists a relationship of a master and servant or that of an employer and employee, the law will infer a contract of service existing between them, notwithstanding the fact that the service or the employment is intended by the person in the position of master to be temporary or of a short duration only. And the law will imply the existence of such relationship where a person is hired by another as an integral part of the latter's business. Stevenson Jordan And Harrison Ltd. v. Macdonald And Evans [1952] 1 TLR 101. Ready Mixed Concrete (South East) Ltd v. Minister Of Pensions And National Insurance [1968] 2 QB 497, 524. The circumstances of this case clearly show that there was a contract of service between the appellants and the respondent because the respondent was employed as part of the appellants' transport business; the term of the employment being that the respondent was placed on a temporary basis at a daily wage of RM15.00 per day until he would eventually be absorbed into permanent service or otherwise have his employment terminated. Thus, clearly the respondent was an employee.*
(emphasis added)

[26] Further, s. 2(5) of the Act states:

2. In this Act unless there is anything repugnant in the subject or context:

(5) *"employee" means any person who is employed for wages under a contract of service or apprenticeship with an employer, whether the contract is expressed or implied oris oral or in writing, on or in connection with the work of an industry to which this Act applies and:*

(i) *who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the industry, whether such work is done by the employee on the premises of the industry or elsewhere;*

(ii) who is employed by or through an immediate employer on the premises of the industry or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the industry or which is preliminary to the work carried on in or incidental to the purpose of the industry; or

(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service, but does not include a person of the descriptions specified in the First Schedule; (emphasis added)

[27] Khairunnisa therefore fits the scope and definition of the word "employee" under s. 2(5) of the Act based on the facts and authorities cited in the above. Her job scope reflects that she was engaged not to perform the services as a person in business on her own account. She was engaged to promote the business of the appellant with everything essential provided by the appellant for that purpose. The test for contract for service and contract of service had been described clearly by Cooke J in *Market Investigation v. Minister of Social Security* [1969] 2 QB 173 as follows:

The fundamental test to be applied is this:

Is the person who has engaged himself to perform these services performing them as a person in business on his own account?

If the answer to that question is 'Yes', then the contract is a contract for services. If the answer is No', then the contract is a contract of service. No exhaustive list has been compiled and perhaps no exhaustive list can be compiled of the consideration which are relevant in determining that question, nor can strict rules be laid down as to the relative weight which the various considerations should carry in particular cases. The most that can be said is that control will no doubt always have to be considered, although it can no longer be regarded as the sole determining factor; and that factors which may be of importance are such matters as whether the man performing the services provides his own equipment, whether he hires his own helpers, what degree of financial risk he takes, what degree of responsibility for investment and management he has, and whether and how far he was an opportunity of profiting from sound management in the performance of his task. (emphasis added)

[28] This court further finds the appellant's contention that both the Director of SOCSO's and the Board's findings are flawed due to the incomplete investigation is without merit.

[29] This appeal was derived from the investigation premised on the report lodged by Khairunnisa that the appellant refused to lodge her accident according to Rule No. 71 of the "Peraturan-Peraturan (Am) Keselamatan Sosial Pekerja 1971" ("the Rules"). The relevant part of Rule No. 71 in the original language states:

Laporan kemalangan oleh seseorang majikan.

71(1) Selepas sahaja menerima notis di bawah peraturan 68, tiap-tiap majikan hendaklah menyiapkan, dalam tiga salinan, laporan kemalangan dalam Borang 21 yang dimaksudkan oleh notis itu, menghantar salinan asal laporan itu, diisi dengan sewajarnya, kepada pejabat yang berkenaan dan salinan kedua kepada Doktor Insurans dan menyimpan salinan ketiga:

Dengan syarat bahawa jika tiada Borang 21 dihantar oleh majikan, Pertubuhan boleh, menurut budi bicaranya, menerima apa-apa keterangan lain berhubung dengan sesuatu bencana kerja:

Dengan syarat selanjutnya bahawa dalam hal orang berinsurans yang mendapat bencana diri selain daripada bencana diri yang bersifat ringan, disebabkan oleh kemalangan yang disebut di bawah seksyen 24 Akta, majikan hendaklah menghantar laporan kemalangan dalam Borang 21 bersama-sama dengan laporan polis yang berhubung dengan kemalangan itu dan dokumen lain sebagaimana yang telah ditentukan oleh Pertubuhan.

[30] Together with her complaints Khairunnisa had lodged all relevant documents as required in Rule No. 102 of the Rules which states (in the original language):

> Keterangan bagi menyokong tuntutan.
>
> 102. Tiap-tiap orang yang membuat sesuatu tuntutan faedah hendaklah, selain daripada perakuan doktor dan borang-borang lain yang dikehendaki dengan tertentu di bawah Peraturan-Peraturan ini, memberi apa-apa maklumat dan keterangan lain sebagaimana yang dikehendaki oleh pejabat yang berkenaan, bagi maksud menentukan tuntutan itu, dan, jika munasabah dikehendaki, hendaklah bagi maksud itu hadir di mana-mana pejabat atau tempat mengikut sebagaimana diarah oleh pejabat yang berkenaan.

[31] Based on the documents submitted by Khairunnisa as the nominee, the respondent can exercise their authority to decide whether she is entitled to claim based on the available documents pursuant to Rule No. 105 of the Rules and thus issuing the respondent's letter dated 3 November 2016. Rule No. 105 of the Rules in its original language states:

> Pihak berkuasa memperakui kelayakan pihak menuntut.
>
> 105. pihak berkuasa bagi memperakui kelayakan pihak menuntut faedah ialah pejabat yang berkenaan.

[32] Therefore, the decision of SOCSO dated 3 November 2016 cannot be said to be improper and/or invalid on the ground that the decision was predetermined as to the question of Khairunnisa's employment status without due or proper investigation. SOCSO has the power to decide a nominee's status of employment. Pertinently, the respondent's decision is not a final decision. The appellant was given the opportunity to be heard by the Board where the trial was conducted with the calling of witnesses from both parties and concluded. There is no breach of natural justice which has occurred.

[33] In the present instance, the Board had applied the correct test laid down in the foregoing passage. After examining the totality of the facts and evidence before it and after considering all the features of the contract, the Board had concluded that Khairunnisa had been engaged under a contract of service.

Conclusion

[34] There is no appealable error in the decision made by the Board. It is the finding of this court that there is nothing perverse in the findings made by the Board.

[35] Premised on the above, the appellant's appeal was dismissed.